

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION	) ) MDL NO. 1456 ) Master File No. 01-12257-PBS ) Subcategory Docket 03-10643
THIS DOCUMENT RELATES TO:	) ) Judge Patti B. Saris
<i>The City of New York, et al.</i>	) )
v.	) )
<i>Abbott Laboratories, et al.</i>	) )

**PLAINTIFFS' NOTICE OF MOTION FOR PARTIAL SUMMARY JUDGMENT  
ON ISSUES RELATING TO THE FEDERAL UPPER LIMIT AND  
UNDER NEW YORK SOCIAL SERVICES LAW § 145-B**

To: All Counsel of Record:

PLEASE TAKE NOTICE THAT on May 15, 2009, plaintiffs in the above-captioned action filed with the Clerk of the District Court of Massachusetts and served on all counsel of record, in the manners indicated below, the following documents in support of their MOTION FOR PARTIAL SUMMARY JUDGMENT ON ISSUES RELATING TO THE FEDERAL UPPER LIMIT AND UNDER NEW YORK SOCIAL SERVICES LAW § 145-B ("plaintiffs' motion").

- (1) Plaintiffs' Memorandum Of Law In Support Of Motion For Partial Summary Judgment On Issues Relating To The Federal Upper Limit And Under New York Social Services Law § 145-b and Appendix A and B thereto. (Filed electronically via ECF. Served on all counsel of record via LNFS).
- (2) **Highly Confidential** Appendix C to Plaintiffs' Memorandum Of Law In Support Of Motion For Partial Summary Judgment On Issues Relating To The Federal Upper Limit And Under New York Social Services Law § 145-b (Filed together with motion for leave to file under seal. Served directly on Counsel for the defendants joined in plaintiffs' motion)

- (3) Declaration of Harris L. Devor in Support of Plaintiffs' Memorandum Of Law In Support Of Motion For Partial Summary Judgment On Issues Relating To The Federal Upper Limit And Under New York Social Services Law § 145-b, sworn to May 15, 2009. (Filed electronically via ECF. Served on all counsel of record via LNFS).
- (4) **Highly Confidential** Exhibits A, B and C to Declaration of Harris L. Devor in Support of Plaintiffs' Memorandum Of Law In Support Of Motion For Partial Summary Judgment On Issues Relating To The Federal Upper Limit And Under New York Social Services Law § 145-b, sworn to May 14, 2009. (Filed together with motion for leave to file under seal. Served directly on Counsel for the defendants joined in plaintiffs' motion)
- (5) Plaintiffs' Local Rule 56.1 Statement of Undisputed Material Facts Related to Federal Upper Limits and Applicable to all Thirteen FUL Defendants and Exhibits thereto. (Filed electronically via ECF. Served on all counsel of record via LNFS).
- (6) Plaintiffs' Individual Local Rule 56.1 Statements of Undisputed Material Facts Related to each of the Thirteen FUL Defendants. (Filed electronically via ECF. Served on all counsel of record via LNFS).
- (7) **Highly Confidential** Exhibits to each of Plaintiffs' Local Rule 56.1 Statements of Undisputed Material Facts Related to each of the Thirteen FUL Defendants. (Filed together with motion for leave to file under seal. Served directly on Counsel for the defendants joined in plaintiffs' motion)

PLEASE TAKE FURTHER NOTICE THAT plaintiffs' motion concerns the following Thirteen Defendants:

- (1) Barr Laboratories, Inc.
- (2) Dey, L.P. and Dey Inc.
- (3) Ethex Corporation
- (4) Ivax Corporation and Ivax Pharmaceuticals Inc.
- (5) Mylan Laboratories, Inc., Mylan Pharmaceuticals, Inc. and UDL Laboratories, Inc.
- (6) Par Pharmaceuticals Companies, Inc. and Par Pharmaceutical, Inc.
- (7) Purepac Pharmaceutical Co.

(8) Boehringer Ingelheim Roxane, Inc. f/k/a Roxane Laboratories, Inc.

(9) Sandoz, Inc.

(10) Teva Pharmaceuticals USA, Inc.

(11) Schering Corp., Schering-Plough Corporation and Warrick  
Pharmaceuticals Corporation

(12) Watson Pharma, Inc. and Watson Pharmaceuticals Inc.

(13) Wyeth Pharmaceuticals, Inc.

PLEASE TAKE FURTHER NOTICE THAT plaintiffs' motion concerns the  
following nine drugs:

(1) Albuterol .90 MCG Inhaler

(2) Albuterol .83 MG Solution

(3) Cefadroxil 500 MG Capsule

(4) Clonazepam .5 MG Tablet

(5) Enalapril Maleate 20 MG Tablet

(6) Isosorbide Mononitrate 60 MG Tablet

(7) Lorazepam 1 MG Tablet

(8) Metoprolol 100 MG Tablet

(9) Ranitidine 150 MG Tablet

Dated: May 15, 2009

Respectfully submitted

**City of New York and New York Counties in  
MDL 1456 except Nassau and Orange by**

KIRBY McINERNEY LLP  
825 Third Avenue  
New York, New York 10022  
(212) 371-6600

/s/ Joanne M. Cicala  
Joanne M. Cicala  
James P. Carroll Jr.  
Jocelyn R. Normand  
Kathryn B. Allen

Ross B. Brooks, Esq.  
MILBERG LLP  
One Pennsylvania Plaza  
New York, NY 10119  
(212) 594-5300  
*Special Counsel for the County of Nassau*

Theresa A. Vitello, Esq.  
LEVY PHILLIPS &  
KONIGSBERG, LLP  
800 Third Avenue  
New York, NY 10022  
(212) 605-6205  
*Counsel for the County of Orange*

**CERTIFICATE OF SERVICE**

I, James P. Carroll Jr., hereby certify that I caused a true and correct copy of the foregoing PLAINTIFFS' NOTICE OF MOTION FOR PARTIAL SUMMARY JUDGMENT ON ISSUES RELATING TO THE FEDERAL UPPER LIMIT AND UNDER NEW YORK SOCIAL SERVICES LAW § 145-B, to be served on counsel of record via electronic service pursuant to paragraph 11 of Case Management Order No. 2, by sending a copy to LexisNexis File and Serve for posting and notification to all parties.

Dated: May 15, 2009

\_\_\_\_\_/s/\_\_\_\_\_  
James P. Carroll, Jr.  
Kirby McInerney LLP  
825 Third Avenue, 16th Floor  
New York, NY 10022  
(212) 371-6600